

Russian Federation

Executive Summary

Under Russian law an employer planning to employ foreign nationals who need a visa to enter Russia is required to obtain permission to hire foreign nationals, work permits and work visas for such foreign nationals before they may start performing their job duties in Russia. Currently, citizens of the majority of countries, including the USA, Canada, China, India, Japan, Korea, as well as all Latin American and European Union countries are required to obtain a visa to enter Russia. A work visa is generally issued for a period of one year.

Those foreign nationals who do not need a visa to enter Russia must also obtain work permits before they start their employment in Russia.

Foreign nationals who enter Russia on business visas have the right to participate in negotiations, training, *etc.*, but cannot be legally employed prior to obtaining both a work visa and work permit.

The procedures for obtaining permission to hire, a work permit and a work visa invitation involve several consecutive steps, and take about four to five months to complete (if the quota for work permits has already been obtained). Additionally, as a precondition for obtaining permission to hire and a work permit, a company is to annually file an application for a quota for work permits for the following year before May 1. Thus, employment of a foreign national in Russia requires advance planning to allow sufficient time for such procedures.

Importantly, the Russian migration legislation is currently undergoing significant amendments and changes, so the procedures involved can be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

Currently, the procedures for obtaining permission to work in Russia for foreign national employees are comparable in their complexity and duration to those in the USA or Western Europe.

Key Government Agencies

A Russian visa can be obtained at a Russian consulate abroad on the basis of an official visa invitation issued by the Federal Migration Service of the Russian Federation, applied for and obtained by the inviting party, which in case of a work visa is the employer. The foreign national should present the original invitation together with other required documents (passport, application form, *etc.*) to the relevant Russian consulate in order to apply for a visa.

An employer planning to hire a foreign national who enters Russia under a visa regime needs to obtain the documents:

- permission to hire and use foreign employees (“Permission to Hire”);
- an individual work permit for each individual foreign national employee (“Work Permit”); and
- a work visa invitation.

All these documents can be obtained from the Federal Migration Service of the Russian Federation.

Current Trends

Recently the Russian law regulating employment of foreign nationals in Russia has been amended. Most of the amendments have been effective since July 1, 2010.

The amendments introduce a special category of foreign employee - a “highly qualified foreign specialist”. The main criterion for recognizing a foreign employee as a highly qualified foreign specialist is a salary level of two million rubles per year (currently approximately USD 67,000) or more. Highly qualified foreign specialists can take advantage of a new simplified procedure for obtaining Work Permits and work visas.

To receive Work Permits for highly qualified foreign specialists their employers are not required to:

- obtain a quota for Work Permits;
- register vacancies with the employment authorities;
- obtain permission to hire foreign nationals; or
- register as an inviting party with the Federal Migration Service.

A Work Permit for a highly qualified foreign specialist may run for three years, with the possibility of repeatedly extending it as long as the specialist has a valid employment contract. The valid territory for the Work Permit may include more than one region of the Russian Federation.

Business Travel

Ordinary Business Visa (“Business Visa”)

Foreign nationals coming to the Russian Federation on short-term business trips may use an ordinary Business Visa. As a general rule, visitors with Business Visas visit Russia for the purpose of participation in key negotiations on business and economic matters, for professional training at Russian joint ventures or accredited

representative offices of foreign commercial entities, or to attend exhibitions or other events. In all of these cases such business-purpose visits are assumed to be short.

There are three types of Business Visa:

- Single entry;
- Double entry; and
- Multiple entry.

Single and double-entry Business Visas may be issued for up to three months. A multiple-entry Business Visa may be issued for up to one year, but it can be used for a limited period of time only, as set forth below.

Currently any foreign national can stay in Russia on the basis of a one-year multiple-entry business visa – without having to leave Russia – for up to 90 days in a period of 180 days. Thus, the maximum period of uninterrupted stay in Russia on the basis of such a business visa is currently 90 consecutive days, and the maximum period of stay in Russia is 180 days in total per year. Every 90 days foreign nationals on a one-year multiple-entry visa have to leave the country. Upon re-entry they can stay in Russia for no longer than another 90 days.

Importantly, pursuant to the migration legislation a foreign national is prohibited from being employed or from working under a civil law contract based on a Business Visa. Therefore, in order to legitimately enter Russia for the purpose of being employed or to provide services under a civil law contract, a foreign national should hold a work visa and a Work Permit. Additionally, it is impossible to change the type of visa, *e.g.*, from a business to a work visa. Entering Russia with a Business Visa for the purpose of employment is considered a

misrepresentation in declaring the purpose of visiting Russia. It is considered an administrative violation and is severely prosecuted if disclosed.

Visa Waiver

There are several narrow exemptions when a visa is not required for entry into the Russian Federation. These exemptions apply, in particular, to the following foreign nationals:

- Citizens of all CIS countries except for Georgia and Turkmenistan;
- Permanent residents of Russia holding a permanent residence permit; and
- Refugees.

Some citizens of Georgia and Turkmenistan enter Russia under the visa-free regime. However, the situation with issuance of visas to citizens of Georgia is currently unclear due to the suspension of diplomatic relations between Russia and Georgia.

Employers do not need to obtain Permission to Hire foreign nationals who do not need a visa to enter Russia. However, prior to commencing work in Russia such foreign nationals should obtain individual Work Permits. When hiring such foreign nationals employers must ensure that they have a valid Work Permit for holding the job position for which they are hired (Please also see our comments below in the Sanctions for Infringement of Migration and Visa Law Requirements section).

Training

Foreign nationals visiting Russia to participate in professional training can obtain an ordinary Business Visa. As mentioned above, foreign nationals entering Russia under a Business Visa are not allowed to be employed or to work in Russia. Therefore, in the event a foreign national participates in on-the-job training, the hosting party should prepare a training plan and other formal documents confirming the educational nature of such training program. Furthermore, foreign nationals participating in such training programs should not be paid salaries; if they are, their participation in such training programs could be considered to be employment.

Employment Assignments

Generally, all employers operating in Russia who plan to conclude a labor or civil law contract with foreign employees who enter Russia under a visa regime must obtain the following:

- Permission to Hire - for the employer;
- Work Permit - for each foreign employee; and
- Invitation for a work visa - for each foreign national employee.

The current standard procedure for obtaining the above documents involves several consecutive steps, and takes about four to five months to complete. Accordingly, employment of a foreign national in Russia requires advance planning to allow sufficient time for the procedure.

The simplified procedure of obtaining immigration documents for highly qualified foreign specialists is outlined in a separate paragraph after the description of a standard procedure.

Ordinary Work Visa (“Work Visa”)

The current procedure for obtaining a Work Visa for a foreign national is briefly outlined below. The procedure may be used by Russian legal entities, accredited representative offices or branch offices of foreign firms.

The procedure for obtaining a Work Visa consists of the following four steps:

- **Step One:** The employer registers with the Federal Migration Service as an inviting party for visa invitation purposes, and obtains a registration card confirming such registration. This step normally takes at least 2-3 weeks to complete. Under the requirements of the Federal Migration Service imposed on all applicants, the set of documents required for registration of the employing company, accredited representative office or branch, and all further visa support applications, should be filed by an authorized representative of the company/rep office or branch. Such representative should hold a relevant power of attorney issued by the employer. In case of initial registration, the presence of the employer’s CEO/chief representative is required.
- **Step Two:** The employer obtains an Invitation for a single-entry visa from the Federal Migration Service. This step usually takes at least 2-3 weeks to complete. The maximum validity of the invitation is three months.
- **Step Three:** The foreign national planning to work in Russia obtains a single-entry visa at the Russian consulate in the country of the foreign national’s citizenship or country of residence, provided that the foreign national has a document certifying the ground for the stay in such country for a period exceeding ninety days (*e.g.*, a residence permit). The single-entry visa is obtained on the basis of the invitation provided

by the employer. If the foreign national obtained the invitation while in Russia, then the procedure is to leave Russia and apply to the respective above-mentioned Russian consulate abroad to obtain the single-entry visa. The foreign national's current Russian visa (if any) is to be cancelled by the Russian consulate simultaneously with the issuance of the new single-entry visa.

- Step 4 - The foreign national exchanges the Single Entry Visa for a Multiple Entry Work Visa upon arrival to Russia. The set of documents required for the exchange is submitted to the Federal Migration Service upon the foreign national's arrival in Russia.

Accredited representative offices or accredited branches of foreign firms may also apply for Work Visa support to their accrediting body. In this case, such representative/branch office of a foreign firm must first obtain a personal accreditation card for the foreign employee from the accrediting body, and then apply to the accrediting body to obtain an invitation for a single-entry visa from the Federal Migration Service.

This procedure is less time consuming and does not require the employer's preliminary registration with the Federal Migration Service for work visa invitation purposes. However, the foreign national should then obtain a single-entry visa at a Russian consulate abroad and then exchange it for a multiple-entry work visa upon his/her arrival in Russia (please, refer to Steps 3 and 4 above of the procedure for obtaining a Work Visa.)

The maximum duration of a Work Visa is 1 year, but it can be limited by the expiry term of other documents (*e.g.*, passport, Work Permit or personal accreditation card). Renewal of a Work Visa involves a less complicated procedure than its obtaining.

Permission to Hire and Work Permit

An employer is not allowed to employ a foreign national who enters Russia under a visa regime without a relevant Permission to Hire, and the foreign national employee is not allowed to start working without obtaining – in addition to the above-mentioned Work Visa – a Work Permit.

The total number of foreign nationals that can be legally employed in Russia each year, *i.e.*, the quota of foreign employees, is established by the Russian Government on an annual basis. Employers planning to employ foreign nationals in the following year should file information on their need for foreign employees with the Public Employment Service before May 1.

The Russian Government each year approves a list of professions/positions for qualified foreign specialists, to whom the quota requirement will not apply. Traditionally, this list is approved in the beginning of the year and includes job titles of chief executive officers/directors of almost all types of Russian legal entities. In particular, the list contains the following positions: general director and director of a joint stock company, director of a representative office, director of a factory, chairman and deputy chairman of an executive committee, director for economics, department director, information security engineer, etc.

Currently, an employer that plans to hire a foreign national who requires a visa to enter Russia should apply to the Federal Migration Service for Permission to Hire and a Work Permit using the so-called “one-window” system, and submitting all the necessary documents. The documents that should be filed with the Federal Migration Service include the following: (i) a legalized/apostilled copy of the foreign national’s university degree certificate; (ii) original medical certificates; (iii) a copy of the foreign national’s passport; and (iv) draft employment agreement, *etc.*

The original medical certificates to be submitted to the Federal Migration Service to obtain a Work Permit should confirm that the foreign national does not suffer from any of the following: (i) leprosy (Hansen's disease); (ii) tuberculosis (white plague); (iii) syphilis; (iv) chlamydial (venereal) lymphogranuloma; (v) chancroid; (vi) HIV; or (vii) drug addiction.

Generally, such medical certificates should be obtained by the foreign national at local medical establishments holding the relevant licenses. The foreign national employee is required to personally show up at one such medical establishment for medical tests, an examination, and an interview. The medical certificates can also be obtained abroad. However, in this case the certificates should be duly notarized, legalized/apostilled and supported by a notarized Russian translation.

Importantly, such medical certificates have an effective term of only 3 months; therefore, they should be issued no earlier than 3 months before the expected receipt of the Work Permit from the Federal Migration Service.

However, prior to applying to the Federal Migration Service the employer needs to file information with the Public Employment Service on its needs regarding employees, *i.e.*, inform of the open vacancies of the employer. In the event the Public Employment Service provides the employer with a local candidate for any such vacancy, the employer would have to hire such candidate or prepare a motivated rejection of such candidate in order to be able to justify its need for a specifically foreign employee.

A further application to the Federal Migration Service can be submitted no earlier than 1 calendar month after the above-mentioned information on the need for additional employees is filed with the Public Employment Service.

The procedures for obtaining the Permission to Hire and Work Permits can be modified by the Federal Migration Service at any time, so it is highly recommended to verify the procedures and documentary requirements in advance on a case-by-case basis.

A Work Permit is normally issued for a term of up to 1 year from the date when the Permission to Hire was issued, but it can be renewed for a shorter term. Renewal of a Work Permit involves the same procedure and takes the same amount of time as obtaining the first Work Permit.

A Work Permit is valid only for a single employing entity, in a single constituent region of the Russian Federation (*e.g.*, Moscow), and for holding a single job (*e.g.*, general director). Thus, two Work Permits would be required for a foreign employee holding 2 jobs in Russia, and a third Work Permit would be required if the employee changes employers, or is transferred to another job (*e.g.*, promoted) or to a different region in Russia (not on a business trip).

However, there are certain exclusions from the rule. They are established by the decree of the Russian Government and fall into 2 main categories:

- sending the employee on a business trip; and
- if the work is of a traveling character, or work is done en route (which must be specified in the employment agreement).

After obtaining the Permission to Hire and Work Permit, the employer needs to document the commencement of employment of a foreign national in accordance with Russian labor law requirements. Thus the employer should execute a Russian law employment agreement (in Russian or accompanied by a Russian translation), issue an internal HR order on the employee's appointment to a particular job position, make an entry in the employee's labor book on his/her hiring,

complete the employee's personal data card (Form T-2) and arrange for other HR paperwork. All these documents must be issued in the Russian language.

Procedure for Obtaining Work Permits and Work Visas for Highly Qualified Foreign Specialists

As mentioned above, recently the Russian legislation on foreign nationals has been amended to introduce a special category of foreign employee - the highly qualified foreign specialist ("HQFS"). An HQFS can enjoy a simplified procedure for obtaining of a Work Permit and a Work Visa.

The main criterion for recognizing a foreign employee as an HQFS is a salary level of two million rubles (currently approximately US\$ 67,000) per year or more. Defining the required qualification level and the assessment of the competence of foreign employees as HQFSs is left to the employers themselves.

To obtain a Work Permit and a Work Visa for the HQFS his/her employer is not required to:

- obtain a quota for Work Permits;
- register vacancies with the employment authorities;
- obtain Permission to Hire foreign nationals; or
- register as an inviting party with the Federal Migration Service.

A Work Permit for the HQFS and a relevant multiple-entry Work Visa invitation are processed by the Federal Migration Service within 14 business days.

A Work Permit and a Work Visa for the HUFFS may run for three years, with the possibility of repeatedly extending them as long as the HUFFS have a valid employment contract. The valid territory for the Work Permit may include more than one region in the Russian Federation.

Certain employers, in particular, representative offices of foreign legal entities, non-profit and religious organizations, and those employers who have been penalized for illegal employment of foreign nationals in Russia within the last two years, can not use the simplified procedure for obtaining Work Permits for Huffs.

Pursuant to the legislation, employers within 30 days of obtaining a Work Permit for an HUFFS must provide the Federal Migration Service with confirmation that the HUFFS has been registered with the tax authorities, and inform the Federal Migration Service on a quarterly basis on the fulfillment of the duty to disburse salary payments to such HUFFS and, if applicable, on termination of the Haft's employment or civil law contract or on the fact that he or she has been provided with long-term unpaid leave.

Work Permit Waiver

The current Russian legislation provides for several narrow exemptions when the employee is not required to obtain a Russian Work Permit. These exemptions apply, in particular, to the following foreign nationals:

- Citizens of Belarus;
- Permanent residents of Russia holding a permanent resident permit;
- Employees of diplomatic and consular institutions of foreign countries in Russia, or employees of international

governmental organizations enjoying diplomatic status, and their private domestic employees;

- Participants in the State Program for Assistance to the Voluntary Movement to the Russian Federation of Compatriots Residing Abroad and their family members;
- Employees of foreign legal entities (producers or suppliers), performing installation (contract supervision) works, servicing and/or repairs of technical equipment supplied to the Russian Federation by their employers;
- Journalists duly accredited in the Russian Federation;
- Students at Russian educational institutions working during vacations;
- Students at Russian educational institutions who work in their educational institutions in positions of auxiliary educational staff;
- Lecturers invited to Russia to give lectures in educational institutions, except for those persons who perform pedagogical activity in professional religious educational institutions (in ecclesiastical educational institutions); and
- Duly accredited employees of Russian representative offices of foreign legal entities on the basis of the principle of reciprocity under international treaties concluded by Russia with foreign states.

Other Comments

Migration Records

Under Russian law, the Russian migration authorities should be notified of the arrival of every foreign national entering Russia under any type of visa or enjoying a visa-free regime (*i.e.*, the migration notification requirement should be observed). Specifically, the employing/hosting party (*e.g.*, landlord, *etc.*) should notify the Russian migration authorities of such arrival at the place of temporary stay by way of a formal written notice within three business days of the arrival date (the day of arrival is included in this term, if a business day).

Every time the foreign national leaves Russia or even just visits another city for more than three business days, the Russian migration authorities should also be notified of such departure within two business days after the departure date.

If a foreign national visits another city within Russia for more than 3 business days, similar migration notification on arrival should be performed. In practice, formal written notices on arrival/departure of a foreign national employee are submitted by the hosting party, *i.e.*, by the employer, hotel staff, *etc.*

Other Types of Ordinary Visas to Enter Russia

Foreign nationals can obtain different types of visas depending on the purpose of their visit, but it is essential that the type of visa matches the actual purpose of the visit:

- an ordinary private visa, which can be obtained upon an invitation from a Russian citizen, a foreign national permanently residing in Russia, a Russian legal entity, *etc.*;

- an ordinary tourist visa, including a group tourist visa;
- an ordinary study visa, which can be obtained by students at Russian educational institutions;
- an ordinary humanitarian visa, which can be obtained by a foreign national entering Russia for the purpose of scientific, cultural, sporting or religious contacts, charity activity or delivery of humanitarian aid; or
- An ordinary refugee visa, which can be obtained by a person seeking refuge.

Sanctions for Infringement of Migration and Visa Law Requirements

Work Permit and work visa requirements are enforced by the Russian Federal Migration Service with increasing vigor. Non-compliance with these requirements may entail imposition of significant penalties envisaged by the Russian Administrative Offences Code. Moreover, administrative sanctions for violation of Russian migration rules may be imposed on the employer, its officers, and the foreign national employee, and include, *inter alia*, heavy fines, and, in the worst cases, deportation from Russia of foreign nationals who do not have the relevant work permits or have the wrong type of visa, and suspension of operations of the employer.

Set forth below are comments on the administrative sanctions that can be applied if immigration requirements are not complied with.

Provision of Services in Russia without the Required Permission to Hire and/or the Work Permit

The employer and/or its officers could become subject to the following administrative fines for violation of immigration requirements: A fine of up to RUB 50,000 (currently approximately

USD 1,660) can be imposed on the employer's officers who are found to be responsible for use and employment of foreign nationals without the relevant permissions; and a fine of up to RUB 800,000 (currently approximately USD 26,600) can be imposed on the employer for the same violation. Moreover, fines may be imposed for each violation separately, *e.g.*, one fine for the absence of Permission to Hire, another fine for the absence of a Work Permit, *etc.* In a worst case scenario, violation of Russian migration laws could lead to the annulment of the employer's Permission to Hire, or even temporary suspension of the employer's activities for up to ninety days. At the same time, the foreign national could become subject to an administrative fine of up to RUB 5,000 (currently approximately USD 165), and even deportation from Russia. Deportation or imposition of administrative fines on foreign nationals may also cause them difficulties in visiting Russia and/or obtaining Work Permits and work visas in the future.

Failure to Comply with the Visa Regime Requirement

A foreign national entering Russia to provide services under a civil law contract or to be employed on the basis of a visa other than work visa (for example, a business visa) may be considered infringing the visa regime. The employer and/or its officers could become subject to the following administrative fines for this infringement:

- A fine of up to RUB 50,000 (currently approximately USD 1,660) can be imposed on the employer's officers responsible for either use of the above services or employment of the foreign national without having obtained the relevant visa therefore.
- A fine of up to RUB 500,000 (currently approximately USD 16,600) can be imposed on the employer.

- The foreign national could also become subject to an administrative fine of up to RUB 5,000 (currently approximately USD 165), and, in a worst case scenario, deportation from Russia.
- Deportation or imposition of administrative fines could also cause difficulties in visiting Russia and/or obtaining Work Permits and work visas in the future.

Failure to Notify the Migration, Employment, or Tax Authorities on Employment/Contracting of a Foreign national

Under Russian law the employer must notify certain local state authorities of the employment of a foreign national. Notification of an application having been made for a visa invitation or conclusion of an employment agreement with a foreign national should be filed by the employer with its local tax office within ten days of the date of the application's filing or conclusion of the respective employment agreement. Notification of employment of a foreign national entering Russia under a visa regime should also be submitted to the local office of both the Public Employment Service and the State Labor Inspectorate within one month from the date on which the employment agreement was concluded.

Upon conclusion of an employment agreement with a foreign national who does not need a visa to enter Russia, the employer still needs to notify the local offices of both the Public Employment Service and the Federal Migration Service - within three days of the employment agreement's conclusion, and also the local tax office - within ten days of its conclusion.

Failure to comply with the requirement to file the above notifications on employment of a foreign national can result in the imposition of additional administrative fines - in the amount of up to RUB 50,000 (currently approximately USD 1,660) on the employer's officers, and

up to RUB 800,000 (currently approximately USD 26,600) on the employer or, in a worst case scenario, even administrative suspension of the employer's operations for up to 90 days.

Further Information

The procedure and the documentary requirements for the employment of foreign nationals in Russia are subject to constant change and should be verified in advance on a case-by-case basis.

Baker & McKenzie's Moscow office provides its clients with legal alerts on the latest amendments to the Russian migration and employment law on a regular basis.